

November 29, 1977 and wound was found to be infected. Patient did not turn up for further follow up."

The loss of two middle fingers and part of the index finger of the right hand makes it very difficult for the plaintiff to lift or carry heavy objects. For this reason he was refused employment by the defendants. The plaintiff is a labourer and the use of the right hand must be of very great importance to him. Therefore having regard to the sums awarded in other cases for similar injuries and in particular to the injuries suffered by the plaintiff and the length of his stay in hospital, I assess a sum of \$15,000 for pain and suffering and loss of amenities.

Regarding the loss of future earning capacity, the plaintiff was 26 years old at the time of the accident and therefore 31 years old at the date of trial. Assuming that he would cease working at the age of 55, he still has 24 years of working life. It is a fact that he suffered reduction in his earnings at a rate of \$150 a month and this reduction is continuing and I have no doubt that he will continue to suffer this disadvantage in the future. In calculating damages under this heading, I give 15 years' purchase in order to take into account all future contingencies. Thus according to the annuity table at page 1015 of *Dass* Volume II the loss of earning capacity should be \$18,683.39.

The total sum for general damages is therefore \$33,683.39, i.e. (\$15,000 + \$18,683.39). This figure to my mind should be further reduced in order to take into account any possibility of the overlapping. I consider a reduction of \$2,000 to be appropriate leaving the amount awarded for general damages to be a global sum of \$32,683.39.

Finally the sums awarded to the plaintiff are as follows:

- (i) \$200 travelling expenses;
- (ii) \$11,152 as pre-trial loss of earnings;
- (iii) \$32,683.39 as general damages;
- (iv) interest at 3% on the total of sum in paras. (i) and (ii) from the date of accident to the date of realization; and
- (v) interest at the rate of 6% on the sum of \$32,683.39 from the date of the service of writ to the date of realization.

I therefore enter judgment for the plaintiff as above and costs.

Claim allowed.

Solicitors: *Mahinder & Co.; S. Sivasubramanian.*

DORIS RODRIGUES v. BALA KRISHNAN

[O.C.J. (Ajaib Singh J.) November 1, 1979 & January 17, 1980]
[Seremban — Civil Suit No. 219 of 1976]

Contract — Breach of promise to marry — Claim for damages — Whether action maintainable — Contracts Act 1950.

Matrimony — Breach of promise to marry — Whether action for damages maintainable — Non-applicability of English Law Reform (Miscellaneous Provisions) Act 1970 — Civil Law Act 1956, s. 5(1) — Contracts Act 1950.

The plaintiff's claim against the defendant was for breach of promise to marry. Evidence revealed that she had lived with the defendant as husband and wife for several years. Subsequently the defendant forsook her to marry another woman. The plaintiff claimed for damages.

A **Held**, allowing the plaintiff's claim: (1) the English Law Reform (Miscellaneous Provisions) Act 1970 which abolished actions for damages for breach of promise of marriage is not applicable in Malaysia by virtue of the Civil Law Act, 1956 and the Contracts Act 1950.

(2) there is no requirement under the Evidence Act 1950 that the plaintiff in such an action should have her evidence corroborated;

B (3) the plaintiff had proved to be a witness of truth and her claim for damages for promise of marriage would be allowed.

CIVIL SUIT.

Gurdial Bakan Singh for the plaintiff.

N. Ramachandran (K. Gunaretnam with him) for the defendant.

Cur. Adv. Vult.

Ajaib Singh J. (delivering decision): On the submissions that have been made in this case several issues call for determination. First whether or not an action for breach of promise of marriage is maintainable in this country. Mr. Ramachandran for the defendant has made some research on the position in England and he has submitted that the Law Reform (Miscellaneous Provisions) Act 1970 has abolished actions for damages for breach of promise of marriage.

Mr. Ramachandran submitted that by virtue of section 5 of the Civil Law Act 1956 (Revised 1972) this English Act is applicable here and therefore from the date of the coming into force of the Revised Civil Law Act 1956 which is April 1, 1972 actions for breach of promise of marriage are no longer maintainable in Malaysia.

I am afraid I cannot agree with Mr. Ramachandran on this point. First of all under section 5(1) of the Civil Law Act the law in England would be applicable here as stated in that section but only if no equivalent law was available in Malaysia. However we have the Contracts Act 1950 (Revised 1974) which covers contracts which include promise to marry. Secondly the Law Reform (Miscellaneous Provisions) Act 1970 cannot be applicable here even if section 5(1) did not provide a local remedy for breach of promise of marriage because any laws of England which could be applicable by virtue of section 5 of the Civil Law Act would be those in existence at the date of coming into force of the Civil Law Act 1956 which is April 7, 1956 and not April 1, 1972 which is the date of coming into force of the revised version.

Secondly on the question of corroboration there is no requirement under our law that the testimony of the plaintiff in an action for damages for breach of promise of marriage should be corroborated by independent material evidence as was the requirement in England. Until the actions for damages for breach of promise of marriage were abolished in 1971 the English law required corroboration of the plaintiff's evidence by virtue of section 2 of the Evidence Further Amendment Act 1969 which states that the testimony of the plaintiff should be corroborated by some other material evidence in support of the promise of marriage. Under our Evidence Act 1950 there is no such requirement that the plaintiff in such an action should have her evidence corroborated.

On the third issue which is the crux of the matter whether or not the plaintiff has proved her case I need not go into the details of the large amount of evidence that has been adduced in this case both oral and documentary. However, after giving due consideration to all the evidence in this case I have come to the conclusion that the plaintiff is entitled to succeed. I accept her evidence that the defendant had promised to marry her and that he had later broken the promise. After hearing the evidence of the plaintiff and observing her demeanour against the whole of the evidence adduced in this case I believe that the plaintiff is a witness of truth. She might have made errors in dates and certain facts but they were not material enough to affect her credibility. On the other hand I found the defendant shrewd and unscrupulous and he had taken advantage of the position of the plaintiff. I also accept the evidence of the plaintiff that she had lived with the defendant as husband and wife and that they had sexual intercourse from the time they started living together although these do not constitute ingredients which the plaintiff has to prove. As I said earlier from all the evidence I have heard in this case I accept the plaintiff as a truthful witness. In the circumstances therefore I allow the plaintiff's claim for damages for breach of promise of marriage. As far as damages are concerned I am generally in agreement with the submission advanced by Mr. Ramachandran that exemplary damages ought not to be awarded in this case. In all the circumstances I am of the view that the plaintiff is entitled to some damages. I therefore award a sum of \$5,000 as damages and costs.

Ajaib Singh J. (delivering judgment on January 17, 1980): I do not think that I can add much more to what I said in my decision on November 1, 1979.

In support of her evidence the plaintiff had called Reverend Peter Bretaudeau (PW2) who had given a note (Exhibit D2) to the effect that the plaintiff and the defendant were engaged in the Church of the Visitation at Seremban on April 18, 1972. In his evidence however Reverend Peter Bretaudeau was not able to say categorically that the plaintiff and the defendant had in fact gone to the Church either for an engagement or for the blessing of couple and their rings. But it is significant to note that the Reverend did say in his evidence that a few years back he was approached by the plaintiff to prepare for a marriage. He had started to fill up the pre-nuptial form with the plaintiff but the form was not completed and the proposition for the marriage did not go through.

As I said earlier in my decision I accepted the evidence of the plaintiff. The engagement was not announced nor was there any formal party held or photographs taken. This is understandable in view of the fact that the plaintiff was a widow several years older than the defendant and was hardly in a position to express her feelings openly and in public. It was in her best interest not to announce the engagement but to abide by the wishes of the defendant. However as things turned out after several years of cohabitation the defendant forsook the plaintiff and married another woman.

Claim allowed.

Solicitors: Gurdial Bakan Singh; Gunaretnam & Co.

PUBLIC PROSECUTOR v. K.M. BASHEER AHMAD

[A.Cr.J. (Mohamed Azmi) March 1, 1981]

[Kuala Lumpur — Federal Territory Criminal Appeal No. 110 of 1981]

Criminal Law and Procedure — Private prosecution — No fiat from the Public Prosecutor — Non-seizable offence becoming seizable by amendment to Act — Copyright Act, 1959, s. 15(1)(d) — Copyright (Amendment) Act 1979 (Act A 461) — Whether omission curable — Criminal Procedure Code (F.M.S. Cap. 6), ss. 376(i), 380(c) & 422.

Copyright Law — Infringement of — Seizable offence — Private prosecution — Procedure.

The respondent was discharged and acquitted in the Magistrate's court on a charge of being in possession at his bookshop 18 infringing copies of literary work, an offence under section 15(1)(d) of the Copyright Act 1969. The prosecution was instituted and conducted by an advocate and solicitor on the basis that the offence was a non-seizable offence. Unbeknown to the parties and Magistrate the non-seizable offence under section 15(1)(d) of the Act became seizable by an amendment to the Act, and thus the case could not be conducted by an advocate and solicitor unless he has fiat from the Public Prosecutor or his department. Neither the complainant nor his counsel had any written authority from the Public Prosecutor or his department to prosecute.

Held, allowing the appeal: (1) the omission was not a mere irregularity but an illegality that could not be cured by section 422 of the Criminal Procedure Code and, as such, the private prosecution before the Magistrate was a nullity *ab initio*;

(2) the order of acquittal was set aside and an order of discharge not amounting to an acquittal was substituted.

CRIMINAL APPEAL.

Muhammed Shafee bin Muhammed Abdullah (Deputy Public Prosecutor) for the appellant.

D.P. Vijendran for the respondent.

Cur. Adv. Vult.

Mohamed Azmi J.: This is an appeal by the Public Prosecutor against the order of the Magistrate at Kuala Lumpur in discharging and acquitting the respondent who was charged for being in possession at his bookshop of eighteen infringing copies of literary work entitled "Lat the Kampong Boy", otherwise than for his domestic or private use, an offence under section 15(1)(d) of the Copyright Act 1969. The case against the respondent was instituted by way of private summons by Ayoub bin Dato Ismail, the General Manager of Berita Publishing Sdn. Bhd., in whose favour the copyright in the book had been assigned.

The facts of the case in chronological order were as follows. On June 22, 1979, as a result of information lodged by Ayoub (PW5), a search warrant against the respondent's bookshop was issued by the Magistrate under subsection (4) of section 15 of the Copyright Act. After the eighteen infringing books had been seized from the bookshop, the complainant applied for summons against the respondent on November 9, 1979, and the summons was issued on November 14. The private summons case came up for mention for the first time on January 4, 1980, and at all material times, the prosecution was conducted by Mr. S.F. Wong, an advocate and solicitor representing the complainant. The trial proper commenced on April 14, 1981 and ended in the acquittal